

1 Plaintiff simplehuman, LLC (“simplehuman”) hereby complains of
2 Defendant Michael Shek d/b/a HLS Commercial (“Defendant”) and alleges as
3 follows:

4 **I. JURISDICTION AND VENUE**

5 1. This Court has original subject matter jurisdiction over the claims in
6 this action that relate to patent infringement, trademark infringement, trade dress
7 infringement, false designation of origin, federal unfair competition, and
8 cancellation of a federal trademark registration pursuant to 15 U.S.C. §§ 1114, 1116,
9 1121, 1125, 35 U.S.C. § 100 *et seq.* and also pursuant to 28 U.S.C. §§ 1331 and
10 1338 as these claims arise under the laws of the United States. The Court has
11 supplemental jurisdiction over the claims in this Complaint that arise under state
12 statutory and common law pursuant to 28 U.S.C. § 1367(a) because those claims are
13 so related to simplehuman’s federal claims within the Court’s original jurisdiction
14 that they form part of the same case or controversy and derive from a common
15 nucleus of operative facts..

16 2. This Court has personal jurisdiction over Defendant because Defendant
17 has a continuous, systematic, and substantial presence within this judicial district
18 and within California. For example, Defendant resides in this district and has a
19 principal place of business in this judicial district at 777 Mariners Island Boulevard,
20 Suite 125, San Mateo, California 94404. simplehuman is informed and believes
21 and, based thereon, alleges that Defendant also sells and/or offers for sale infringing
22 products in this district and/or sells them into the stream of commerce knowing such
23 products would be sold in California and this district, and these acts form a
24 substantial part of the events or omissions giving rise to simplehuman’s claims.

25 3. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b) and
26 (d) and 1400(b) because Defendant resides in this judicial district and because
27 Defendant has committed acts of infringement by selling and/or offering to sell
28 infringing products in this judicial district and has a regular and established place of

1 business in this judicial district.

2 **II. THE PARTIES**

3 4. Plaintiff simplehuman is a California limited liability company having
4 its principal place of business at 19850 Magellan Drive, Torrance, California 90502.

5 5. simplehuman is informed and believes, and based thereon alleges, that
6 Defendant Michael Shek is an individual residing in this district and doing business
7 as HLS Commercial.

8 **III. INTRADISTRICT ASSIGNMENT**

9 6. This action is an intellectual property action subject to district-wide
10 assignment pursuant to Local Civil Rules 3-2(c) and 3-5(b).

11 **IV. GENERAL ALLEGATIONS**

12 7. simplehuman was founded in 2000 with the goal of designing a unique
13 trash can. Since then, simplehuman has been engaged in the manufacture and sale
14 of highly stylistic and distinctive trash cans and has expanded its product line to
15 pioneer a variety of innovations in other kitchen and bath tools. Through its tireless
16 efforts, simplehuman has become a leader in the design and production of a variety
17 of consumer home goods, including trash cans, mirrors, sensor pumps, dishracks,
18 sink caddies, and more.

19 8. simplehuman is informed and believes and, based thereon, alleges that
20 Defendant Shek is the sole and driving force behind the sales of all products under
21 the HLS Commercial mark, including all decisions regarding the advertisement,
22 promotion, manufacture, design, development, sale, offer for sale, and/or
23 importation into the United States of all products under the HLS Commercial mark.

24 9. Defendant Shek, in his individual capacity, is the registered owner of
25 U.S. Trademark Registration No. 5,264,873 for the mark HLS Commercial for use
26 in connection with: Trash cans; Garbage cans; Soap dispensers; Paper towel
27 dispensers for household use; Napkin dispensers for household use; Toilet tissue
28 holders. A true and correct copy of U.S. Trademark Registration No. 5,264,873 is

1 attached as **Exhibit 1**.

2 10. Defendant Shek doing business as HLS Commercial is advertising,
3 promoting, manufacturing, designing, developing, selling, offering for sale, and/or
4 importing into the United States products that copy the designs of simplehuman's
5 products. A true and correct copy of the HLS Commercial 2020 Product Catalog is
6 attached as **Exhibit 2** ("the 2020 Product Catalog"). In at least one of his social
7 media posts, Defendant refers to HLS Commercial products as "his own products."

8 11. Since at least as early as 2001, simplehuman has manufactured and sold
9 its iconic Bullet trash can. The Bullet trash can bears a distinctive, nonfunctional
10 trade dress in the overall design of the product ("Bullet Trade Dress"), which
11 includes: a cylindrical metal body that has a metallic color; a top ring that is
12 concentric with the body and contrasts against the metallic color of the body; a metal
13 top cap that is shaped like a truncated dome to create an opening with a diameter
14 smaller than the diameter of the metallic body and contrasts against the color of the
15 top ring; the metal of the top cap curves into the opening to create a semi-toroidal
16 rim as the circumference of the opening. The following is an image of an exemplary
17 product bearing the distinctive Bullet Trade Dress that has been annotated with short
18 hand descriptions of the features described above. The use of short hand names for
19 certain features is solely for ease of reference in the following image and is not
20 intended to modify or eliminate any element of the simplehuman's Bullet Trade
21 Dress described herein.



12. The simplehuman's products bearing the Bullet Trade Dress have achieved remarkable success in the marketplace.

13. As a result of simplehuman's widespread use and display of the Bullet Trade Dress, (a) the public has come to recognize and identify products bearing the Bullet Trade Dress as emanating from simplehuman, (b) the public recognizes that products bearing the Bullet Trade Dress constitute high quality products that conform to the specifications created by simplehuman, and (c) the Bullet Trade Dress has established strong secondary meaning and extensive goodwill.

14. The Bullet Trade Dress is non-functional. The design features embodied by the Bullet Trade Dress are not essential to the function of the product, do not make the product cheaper or easier to manufacture, and do not affect the quality of the product. The design elements of the Bullet Trade Dress are not a competitive necessity for trash can products.

15. Without permission or consent from simplehuman, Defendant is using simplehuman's Bullet Trade Dress. Defendant manufactures, imports, offers for sale, and/or sells products under the mark HLS Commercial that use trade dress that

1 is confusingly similar to the Bullet Trade Dress, for example the Round Open-Top
2 Trash Can (HLS13STR/HLS16STR) shown below.



13 16. Defendant has copied simplehuman's Bullet Trade Dress in an attempt
14 to benefit from the immense goodwill simplehuman has created in the marketplace.

15 17. simplehuman is informed and believes, and based thereon alleges that
16 Defendant intended to blatantly copy simplehuman's design and pass off his
17 products as simplehuman's products to misappropriate the immense goodwill that
18 simplehuman has spent enormous time, effort, and expense to cultivate in the
19 marketplace.

20 18. Defendant's use of the Bullet Trade Dress in commerce is likely to
21 cause confusion, cause mistake, and deceive as to the affiliation, connection, or
22 association of Defendant and his products with simplehuman, when there is none.

23 19. Defendant's acts of trade dress infringement complained of herein have
24 caused simplehuman to suffer irreparable injury to its business. simplehuman will
25 continue to suffer irreparable injury unless and until Defendant is enjoined from its
26 willful actions complained of herein.

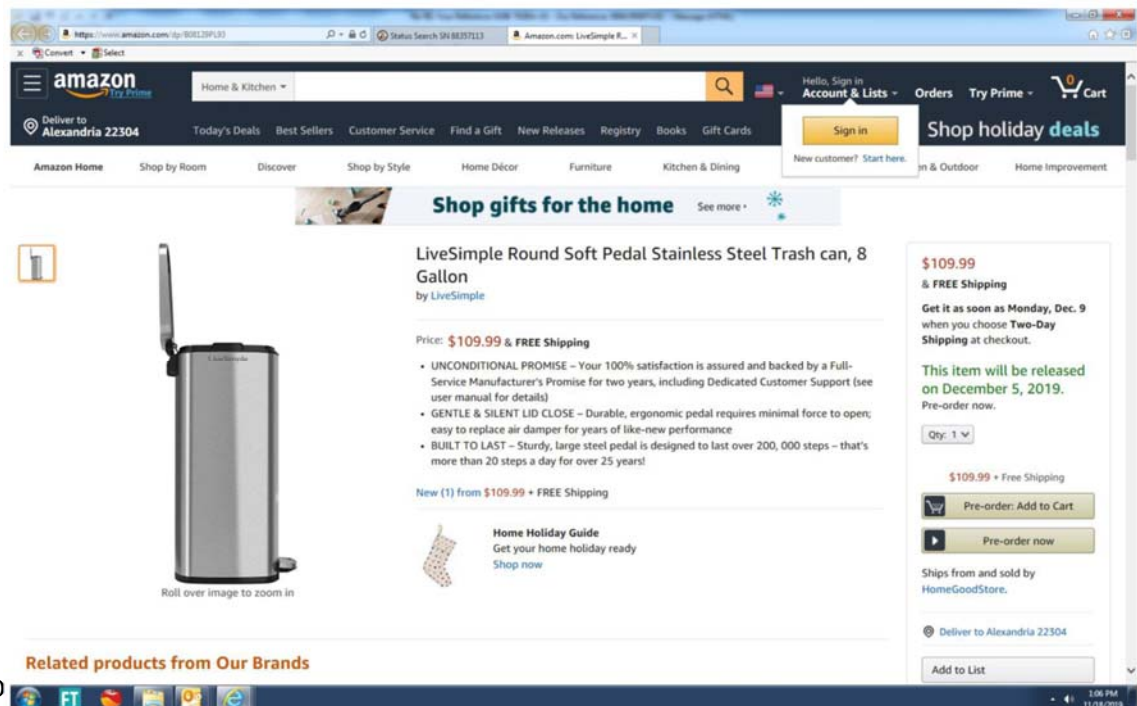
27 20. simplehuman is informed and believes, and on that basis alleges, that
28 Defendant's acts of trade dress infringement complained of herein are willful and

1 deliberate.

2 21. simplehuman owns U.S. Trademark Registration No. 2,882,479 for the
3 mark SIMPLEHUMAN® (“the SIMPLEHUMAN® Mark”). Attached hereto as
4 **Exhibit 3** is a true and correct copy of the ’479 Registration, which is incorporated
5 by reference. Pursuant to 15 U.S.C. § 1065, the ’479 Registration is incontestable.

6 22. As a result of simplehuman’s long, continuous, extensive and exclusive
7 use of the simplehuman Mark, as well as its marketing, promotion, and sale of
8 products under that mark, the relevant public has come to recognize the
9 simplehuman Mark as identifying products that originate from or are otherwise
10 associated exclusively with simplehuman. simplehuman has spent enormous, time,
11 effort, and expense to create valuable goodwill in the simplehuman Mark.

12 23. Long after simplehuman started using the simplehuman Mark,
13 Defendant Shek applied for and registered U.S. Trademark Registration No.
14 5,969,114 for the mark LIVESIMPLE (“the LIVESIMPLE Mark”). As part of the
15 application for ’114 Registration, Shek submitted a statement of use and specimen
16 affirming that Defendant was in fact using the LIVESIMPLE Mark in commerce,
17 and submitted the specimen below showing use of the LIVESIMPLE Mark in
18 commerce in connection with trash cans:



1 24. Defendant is not affiliated with simplehuman. simplehuman has never
2 given Defendant license, permission or authority to use or display the simplehuman
3 Mark or any similar mark.

4 25. Defendant has attempted to capitalize on simplehuman's valuable
5 reputation and customer goodwill in the simplehuman Mark by using the
6 confusingly similar LIVESIMPLE mark in connection with the advertisement,
7 marketing, promotion, sale, and/or offer for sale of identical goods, namely trash
8 cans, with similar price points in overlapping retail and distribution channels in a
9 manner that creates consumer confusion.

10 26. On March 17, 2015, Defendant Shek filed U.S. Trademark Application
11 Nos. 86566929 and 86566945 for the mark SUPERHUMAN. In a letter dated April
12 20, 2015, simplehuman complained about Defendant's registration of the
13 SUPERHUMAN mark, which simplehuman asserted infringed its trademark rights
14 in its SIMPLEHUMAN® Mark. While the parties resolved this matter regarding
15 Defendant's use and applications to register the SUPERHUMAN mark, Defendant
16 has been aware of simplehuman, its trademarks and its products since at least as
17 early as April 2015.

18 27. Defendant was, thus, aware of the SIMPLEHUMAN® Mark when he
19 started using the LIVESIMPLE mark.

20 28. Without permission or consent from simplehuman, Defendant has
21 infringed simplehuman's SIMPLEHUMAN® Mark in interstate commerce by
22 advertising, marketing, promoting, selling, and/or offering to sell products under the
23 LIVESIMPLE Mark.

24 29. simplehuman is informed and believes, and based thereon alleges that
25 Defendant's actions alleged herein are intended to cause confusion, mistake, or
26 deception as to the source of Defendant's products and to cause consumers and
27 potential customers to believe that Defendant's products are associated with,
28 sponsored by, originate from, or are approved by, simplehuman, when they are not.

1 30. simplehuman protects its substantial investment in innovation with its
2 patents, including U.S. Design Patent Nos. D644,807 C1 (“the D807 Patent”) and
3 D729,485 S (“the D485 Patent”) and U.S. Patent No. 6,626,316 (the ’316 Patent”).

4 31. On September 6, 2011, the United States Patent & Trademark Office
5 (“USPTO”) duly and lawfully issued the D807 Patent, titled “Slim Open Trash
6 Can.” The D807 Patent was the subject of a Supplemental Examination Request,
7 which was filed on February 21, 2017. On March 22, 2019, the USPTO duly and
8 lawfully issued an Ex Parte Reexamination Certificate for the D807 Patent. True
9 and correct copies of the D807 Patent, including the Ex Parte Reexamination
10 Certificate, are attached hereto as **Exhibit 4**.

11 32. On May 12, 2015, the USPTO duly and lawfully issued the D485
12 Patent, titled “Dual Recycler.” A true and correct copy of the D485 Patent is
13 attached hereto as **Exhibit 5**.

14 33. On September 30, 2003, the USPTO duly and lawfully issued the ’316
15 Patent, titled “Trash Can Assembly with Toe-Kick Recess.” A true and correct copy
16 of the ’316 Patent is attached hereto as **Exhibit 6**.

17 34. Defendant makes, uses, sells, offers for sale, and/or imports into the
18 United States, products that infringe each of the D807, D485, and ’316 Patents.

19 35. Infringement of a design patent is determined under the Ordinary
20 Observer Test: “[I]f, in the eye of an ordinary observer, giving such attention as a
21 purchaser usually gives, two designs are substantially the same, if the resemblance
22 is such as to deceive such an observer, inducing him to purchase one supposing it to
23 be the other, the first one patented is infringed by the other.” *Egyptian Goddess,*
24 *Inc. v. Swisa, Inc.*, 543 F.3d 665, 670 (Fed. Cir. 2008) (en banc) (quoting *Gorham*
25 *Co. v. White*, 81 U.S. 511, 528 (1871)). Application of the Ordinary Observer Test
26 focuses on the overall appearance of the design, rather than particular elements, and
27 often undertakes a side-by-side visual comparison.

28 36. Defendant makes, uses, sells, offers for sale, and/or imports into the

1 United States products that infringe the D807 Patent, including, for example, the
2 Oval Open Top trash can product (HLS13STV/HLS16STV) shown for example on
3 Page 4 of the 2020 Product Catalog.

4 37. Defendant markets and promotes its Oval Open Top trash can products
5 as having an “oval open top,” as for example shown on page 4 of the 2020 Product
6 Catalog.

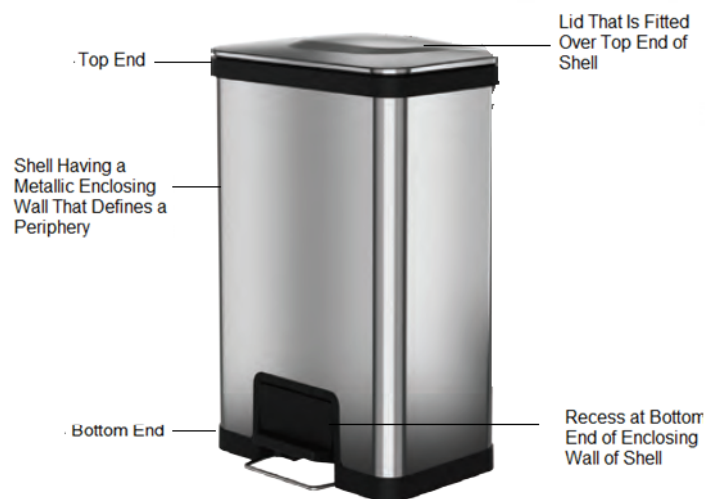
7 38. Defendant makes, uses, sells, offers for sale, and/or imports into the
8 United States products that infringe the D485 Patent, including, for example, the
9 Open Top Recycle Bin/Trash Can (HLS05DRO) shown for example on Page 4 of
10 the 2020 Product Catalog.

11 39. The ’316 Patent describes and claims an improved trash can assembly.
12 For example, claim 1 of the ’316 Patent is directed to a trash can assembly,
13 comprising: a shell having a top end and a bottom end, the shell having a metal
14 enclosing wall that defines a periphery, the enclosing wall having a recess at its
15 bottom end; a curved recess panel, separate from the shell, that is fitted in the recess,
16 the curved recess panel made of a non-metal material; a lid fitted over the top end;
17 a foot pedal partially positioned in the recess panel, with a portion of the foot pedal
18 positioned inside the periphery of the shell; and a link assembly coupling the foot
19 pedal and the lid.

20 40. Defendant makes, uses, sells, offers for sale, and/or imports into the
21 United States products, including for example the Trash Can with AirStep
22 Technology (HLS13SS/HLS18SS) shown on page 3 of the Product Catalog and
23 Pedal-Sensor Trash Can Black, Red, or White Trim
24 (HLS13SB/HLS13SR/HLS13SW) shown on page 6 of the Product Catalog
25 (“Accused Step Products”), that infringe at least one claim of the ’316 Patent.

26 41. For example, as annotated in the below-referenced photographs of an
27 exemplary Accused Step Product, the product is a trash can assembly that has a shell
28 having a top end and a bottom end, the shell having a metal enclosing wall that

1 defines a periphery. The enclosing wall of the shell has a recess at its bottom end.
 2 A plastic curved recess panel, which is separate from the shell, fits in the recess of
 3 the enclosing wall. The Accused Step Product also includes a lid that is fitted over
 4 the top end of the shell. The Accused Step Product includes a foot pedal partially
 5 positioned in the recess panel, with a portion of the foot pedal positioned inside the
 6 periphery of the shell. The Accused Step Product also has a link assembly that
 7 couples the foot pedal to the lid.



42. simplehuman is informed and believes and, based thereon, alleges that Defendant Shek is also the CEO of iTouchless Housewares and Products, Inc. (“iTouchless”). Defendant had actual notice of each of the D807, D485, and ’316 Patents, for example, at least through the filing of the complaint in the action captioned *simplehuman, LLC v. iTouchless Housewares and Products, Inc.* (C.A. 4:19-cv-02701-HSG) filed in this district on May 17, 2019 (“iTouchless N.D.

1 Action”).

2 43. Despite having actual notice of the patents, Defendant continues to
3 make, use, sell, offer for sale, and/or import into the United States products that
4 infringe each of the D807, D485, and ’316 Patents including, for example, the
5 infringing products identified above.

6 44. By continuing to make, use, sell, offer for sale, and/or import into the
7 United States products that infringe each of the D807, D485, and ’316 Patents with
8 actual notice of these patents, Defendant’s actions constitute willful and intentional
9 infringement.

10 45. simplehuman has also filed an action captioned *simplehuman, LLC v.*
11 *iTouchless Housewares and Products, Inc.* (C.A. 2:19-cv-02351-MWF-KS) in the
12 United States District Court for the Central District of California against iTouchless
13 for infringement of the Bullet Trade Dress and related causes of action (“iTouchless
14 C.D. Action”).

15 46. Although iTouchless sells products under marks that are owned by
16 iTouchless and sells products under the Halo™ mark on a website that is purportedly
17 owned by iTouchless, the HLS Commercial Mark is owned by Michael Shek in his
18 personal capacity. Further, there are no markings on the HLS Commercial website
19 to indicate that it is affiliated with iTouchless. simplehuman is informed and
20 believes and, based thereon, alleges that the products sold by HLS Commercial and
21 iTouchless are separate products sold by separate entities. Accordingly, under 35
22 U.S.C. § 299, simplehuman cannot add Michael Shek to the iTouchless N.D. Action
23 because simplehuman’s right to relief is not asserted against both Michael Shek and
24 iTouchless “jointly, severally, or in the alternative with respect to or arising out of
25 the same transaction, occurrence, or series of transactions or occurrences relating to
26 the making, using, importing into the United States, offering for sale, or selling of
27 the same accused product.”

28 47. Moreover, simplehuman could not have sought to add Michael Shek to

the iTouchless C.D. Action because this action does not arise out of the same nucleus of operative fact as the iTouchless C.D. Action and, under 35 U.S.C. § 1400(b), the Central District of California is not the proper venue for simplehuman's claims for patent infringement.

48. Defendant Shek's actions of trademark infringement, trade dress infringement, design patent infringement, and attempts to register marks that are confusingly similar to simplehuman's registered trademarks display a concerted and consistent attempt to pass off his products as simplehuman's products and to misappropriate the immense goodwill that simplehuman has spent enormous time, effort, and expense to cultivate in the marketplace.

49. Defendant's acts complained of herein have caused simplehuman to suffer irreparable injury to its business. simplehuman will continue to suffer substantial loss and irreparable injury unless and until Defendant is enjoined from its wrongful actions complained of herein.

V. FIRST CLAIM FOR RELIEF

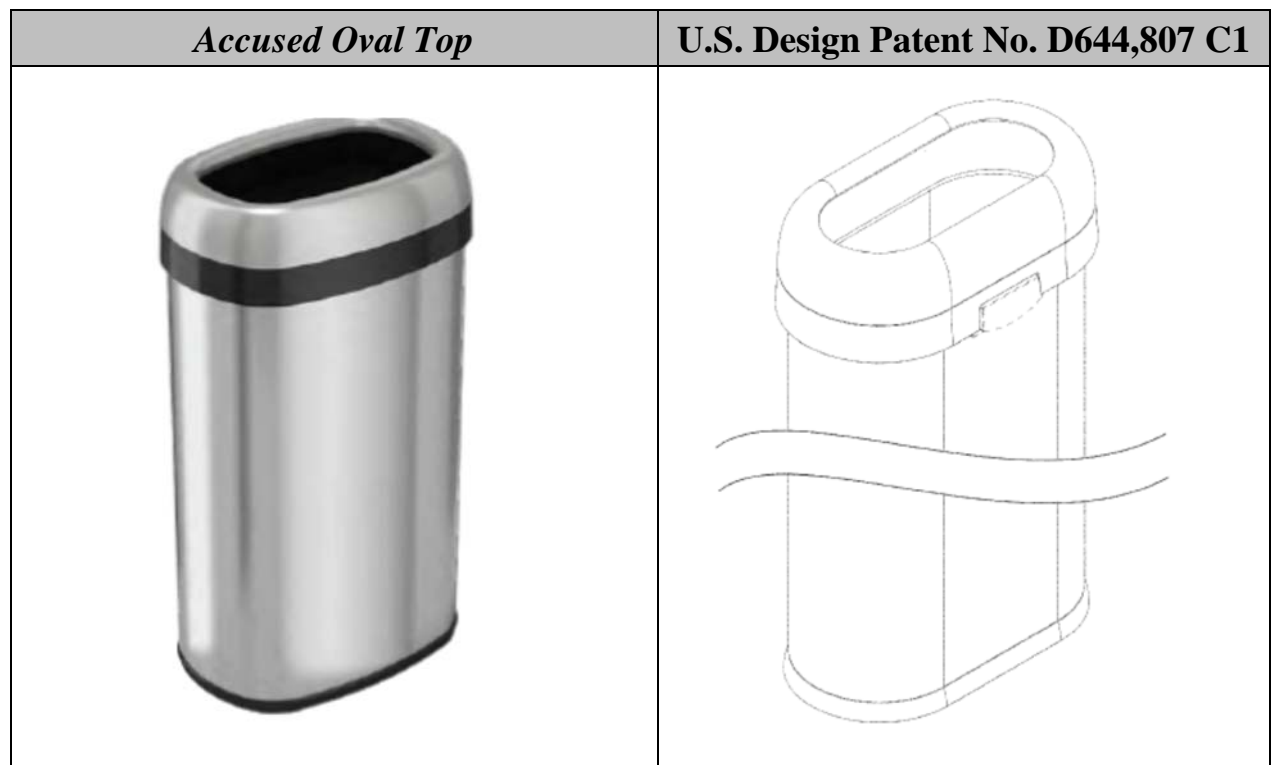
(Patent Infringement under 35 U.S.C. § 271)

50. simplehuman repeats and re-alleges the allegations of paragraphs 1-49 of the Amended Complaint as if set forth fully herein.

51. This is a claim for patent infringement under 35 U.S.C. § 271.

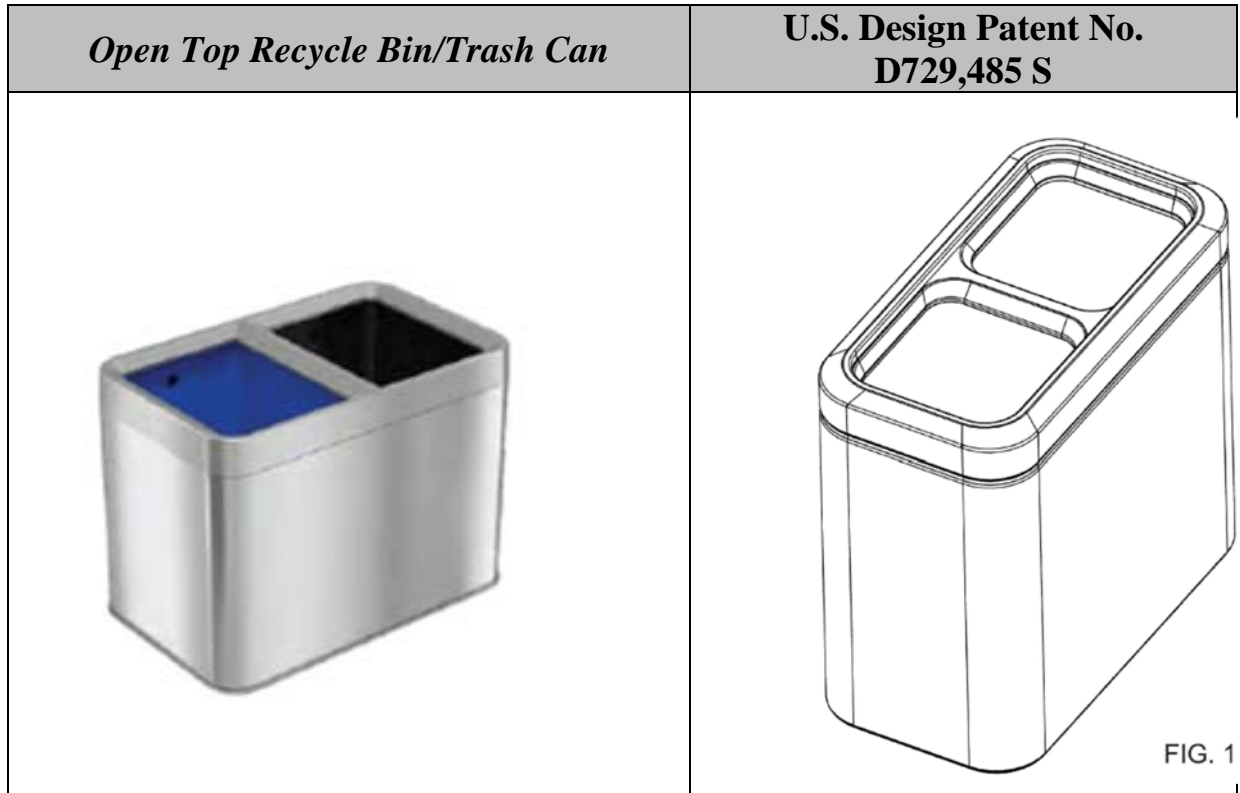
52. Defendant, through his agents, employees, and/or servants has infringed, and continues to infringe, the D807 Patent by making, using, selling, offering for sale, and/or importing products, including for example the Oval Open Top products (HLS13STV/HLS16STV) ("Accused Oval Product") products shown for example on page 4 of the 2020 Product Catalog, that have a design that infringes the D807 Patent. For example, the side-by-side visual comparison of simplehuman's patented design shown in the D807 Patent and one of Defendant's Accused Oval Products shown below establishes that in the eye of an ordinary observer, giving such attention as a purchaser usually gives, the design of

Defendant's Accused Oval Products is substantially the same as the claimed design of the D807 Patent, because the resemblance is such as to deceive such an observer inducing him to purchase one supposing it to be the other. The D807 Patent states on its face that "[a]ll features illustrated in phantom line are expressly disclaimed and form no part of the claimed design." As shown in the side-by-side visual comparison below, Defendant infringes the D807 Patent.



53. Defendant, through his agents, employees, and/or servants has infringed, and continues to infringe, the D485 Patent by making, using, selling, offering for sale, and/or importing products, including for example the Open Top Recycle Bin/Trash Can (HLS05DRO) series of products shown for example on page 5 of the 2020 Product Catalog, that have a design that infringes the D485 Patent. For example, the side-by-side visual comparison of simplehuman's patented design shown in the D485 Patent and one of Defendant's Open Top Recycle Bin/Trash Can products shown below establishes that in the eye of an ordinary observer, giving

1 such attention as a purchaser usually gives, the design of Defendant's Open Top
 2 Recycle Bin/Trash Can is substantially the same as the claimed design of the D485
 3 Patent, because the resemblance is such as to deceive such an observer inducing him
 4 to purchase one supposing it to be the other. As a result, Defendant infringes the
 5 D485 Patent.



19
 20 54. Defendant, through his agents, employees, and/or servants has
 21 infringed, and continues to infringe, the '316 Patent, either literally or under the
 22 doctrine of equivalents, through, for example, the manufacture, use, sale, offer for
 23 sale, and/or importation into the United States of the Accused AirStep Product.

24 55. For example, the Accused Step Products each infringe at least Claim 1
 25 of the '316 Patent because each of the Accused Step Products is a trash can assembly
 26 that has a shell having a top end and a bottom end, the shell having a metal enclosing
 27 wall that defines a periphery. The enclosing wall of the shell has a recess at its
 28 bottom end. Each of the Accused Step Products includes a non-metallic, plastic

1 curved recess panel, which is separate from the shell. The recess panel fits in the
 2 recess of the enclosing wall. Each of the Accused Step Products also includes a lid
 3 that fits over the top end of the shell. Each of the Accused Step Products includes a
 4 foot pedal that is at least partially positioned inside the recess panel, with a portion
 5 of the foot pedal positioned inside the periphery of the shell. Each of the Accused
 6 Step Products also has a link assembly that couples the foot pedal to the lid.

7 56. As a direct and proximate result of Defendant's acts of infringement,
 8 Defendant has derived and received gains, profits, and advantages in an amount that
 9 is not presently known to simplehuman.

10 57. Pursuant to 35 U.S.C. § 284, simplehuman is entitled to damages for
 11 Defendant's infringing acts and treble damages together with interests and costs as
 12 fixed by this Court.

13 58. Pursuant to 35 U.S.C. § 289, simplehuman is entitled, at its election, to
 14 Defendant's total profits from the infringement of simplehuman's design patents.

15 59. Pursuant to 35 U.S.C. § 285, simplehuman is entitled to reasonable
 16 attorneys' fees for the necessity of bringing this claim.

17 60. Due to the aforesaid infringing acts, simplehuman has suffered great
 18 and irreparable injury, for which simplehuman has no adequate remedy at law.

19 61. Defendant will continue to willfully infringe and induce infringement
 20 of simplehuman's patent rights to the great and irreparable injury of simplehuman,
 21 unless enjoined by this Court.

22 **VI. SECOND CLAIM FOR RELIEF**

23 **(Federal Trade Dress Infringement)**

24 **(15 U.S.C. § 1125(a))**



25 62. simplehuman repeats and re-alleges the allegations of paragraphs 1-49
 26 of this Complaint as if set forth fully herein.

27 63. This is a claim for trade dress infringement under 15 U.S.C. § 1125(a).

28 64. As a result of the widespread use and promotion of simplehuman's

Bullet Trade Dress, the Bullet Trade Dress has acquired secondary meaning to consumers and potential consumers, in that consumers and potential consumers have come to associate the Bullet Trade Dress with simplehuman.

65. Subsequent to simplehuman's use and adoption of the Bullet Trade Dress, and the development of secondary meaning in that trade dress, Defendant has developed, manufactured, imported, promoted, offered for sale, and/or sold products that use trade dress that is confusingly similar to the Bullet Trade Dress. An example of Defendant's infringing use of the Bullet Trade Dress, as found on pages 3-4 of the 2020 Product Catalog, is shown below.

| Round Open Top Trash Can | simplehuman's Bullet Trash Can |
|--|--|
|  |  |

66. simplehuman is informed and believes, and based thereon alleges, that Defendant had actual knowledge of simplehuman's ownership and prior use of the Bullet Trade Dress.

67. simplehuman is informed and believes, and based thereon alleges, that Defendant infringed simplehuman's Bullet Trade Dress rights with the intent to unfairly compete with simplehuman, to trade upon simplehuman's reputation and goodwill by causing confusion and mistake among customers and the public, and to deceive the public into believing that Defendant's products are associated with, sponsored by, originated from, or are approved by simplehuman, when they are not, resulting in a loss of reputation in, and mischaracterization of, simplehuman's

1 products and its brand.

2 68. Defendant's activities constitute willful and intentional infringement of
3 simplehuman's trade dress rights in total disregard of simplehuman's proprietary
4 rights and were done despite Defendant's knowledge that use of the Bullet Trade
5 Dress was and is in direct contravention of simplehuman's rights.

6 69. simplehuman is informed and believes, and based thereon alleges, that
7 Defendant has derived and received, and will continue to derive and receive, gains,
8 profits, and advantages from Defendant's trade dress infringement in an amount that
9 is not presently known to simplehuman. By reason of Defendant's actions,
10 constituting trade dress infringement, simplehuman has been damaged and is
11 entitled to monetary relief in an amount to be determined at trial.

12 70. Pursuant to 15 U.S.C. § 1117, simplehuman is entitled to recover
13 (1) Defendant's profits, (2) any damages sustained by simplehuman, and (3) the
14 costs of the action. In assessing damages, the Court may enter judgment up to three
15 times actual damages, and in awarding profits, the Court may in its discretion enter
16 judgment for such a sum as the court shall find to be just according to the
17 circumstances of the case. The Court may also award simplehuman its reasonable
18 attorneys' fees for the necessity of bringing this claim.

19 71. Due to Defendant's actions, constituting trade dress infringement,
20 simplehuman has suffered great and irreparable injury, for which simplehuman has
21 no adequate remedy at law.

22 72. Defendant will continue to infringe simplehuman's trade dress rights
23 to the great and irreparable injury of simplehuman, unless and until Defendant is
24 enjoined by this Court.

25 **VII. THIRD CLAIM FOR RELIEF**

26 (Trademark Infringement under 15 U.S.C. § 1114)

27 73. simplehuman repeats and re-alleges the allegations of paragraphs 1-72
28 of this Complaint as if set forth fully herein.

1 74. This is a claim for trademark infringement under 15 U.S.C. § 1114.

2 75. simplehuman owns a valid and enforceable federally registered
3 trademark for the SIMPLEHUMAN® Mark, specifically the '479 Registration.

4 76. Defendant has used in commerce, without permission from
5 simplehuman, a confusingly similar mark to the SIMPLEHUMAN® Mark, which
6 is the subject of the '479 Registration, in connection with the advertising, marketing,
7 promotion, sale, and/or offer for sale of Defendant's products. Such use is likely to
8 cause confusion or mistake, or to deceive.

9 77. simplehuman is informed and believes, and based thereon alleges that
10 Defendant acted with the intent to trade upon simplehuman's reputation and
11 goodwill by causing confusion and mistake among customers and the public and to
12 deceive the public into believing that Defendant's products are associated with,
13 sponsored by, originate from, or are approved by, simplehuman, when they are not.

14 78. Defendant's activities complained of herein constitute willful and
15 intentional infringement of simplehuman's incontestable registered trademark.

16 79. simplehuman is informed and believes, and based thereon alleges that
17 Defendant had actual knowledge of simplehuman's ownership and prior use of the
18 SIMPLEHUMAN® Mark, and that Defendant has willfully infringed
19 simplehuman's trademark rights under 15 U.S.C. § 1114.

20 80. Defendant, by his actions, has damaged simplehuman in an amount to
21 be determined at trial.

22 81. Defendant, by his actions, has irreparably injured simplehuman. Such
23 irreparable injury will continue unless Defendant is preliminarily and permanently
24 enjoined by this Court from further violating simplehuman's rights, for which
25 simplehuman has no adequate remedy at law.

26 **VIII. FOURTH CLAIM FOR RELIEF**

27 (False Designation of Origin & Federal Unfair Competition)

28 (15 U.S.C. § 1125(a))

1 82. simplehuman repeats and re-alleges the allegations of paragraphs 1-81
2 of this Complaint as if set forth fully herein.

3 83. This is a claim for unfair competition and false designation of origin
4 under 15 U.S.C. § 1125(a) based on Defendant's infringement of the Bullet Trade
5 Dress and the SIMPLEHUMAN® Mark and Defendant's attempts to mislead
6 consumers into believing there is an association between simplehuman and
7 Defendant by using marks that are confusingly similar to simplehuman's trademarks
8 and by selling copies of simplehuman's products.

9 84. Defendant's acts complained of herein constitute false designation of
10 origin, false or misleading description of fact, or false or misleading representation
11 of fact, which is likely to cause confusion, or to cause mistake, or to deceive as to
12 the affiliation, connection, or association of such person with another person, or as
13 to the origin, sponsorship, or approval of its goods or commercial activities by
14 another person in violation of 15 U.S.C. § 1125(a).

15 85. Defendant's acts complained of herein constitute false designation of
16 origin, false or misleading description of fact, or false or misleading representation
17 of fact, which misrepresents the nature, characteristics, qualities, or geographic
18 origin of his goods or commercial activities in violation of 15 U.S.C. § 1125(a).

19 86. Defendant has falsely designated the origin of his products as
20 originating from simplehuman and competed unfairly with simplehuman.

21 87. simplehuman is informed and believes that Defendant's acts of false
22 designation of origin, passing off, and unfair competition have been willful and
23 without regard to simplehuman's rights.

24 88. simplehuman has been damaged by Defendant's conduct in an amount
25 to be determined at trial.

26 89. Such conduct by Defendant is likely to confuse, mislead, and deceive
27 Defendant's customers, purchasers, and members of the public as to the origin of
28 Defendant's products or cause said persons to believe that Defendant and/or his

1 products have been sponsored, approved, authorized, or licensed by simplehuman
2 or are in some way affiliated or connected with simplehuman, all in violation of 15
3 U.S.C. § 1125(a), and this constitutes unfair competition with simplehuman.

4 90. simplehuman is informed and believes and, based thereon, alleges that
5 Defendant's actions were undertaken willfully with full knowledge of the falsity of
6 such designation of origin, passing off, and false descriptions or representations.

7 91. simplehuman is informed and believes and, based thereon, alleges that
8 Defendant has derived and received, and will continue to derive and receive, gains,
9 profits, and advantages from Defendant's false designation of origin, false or
10 misleading statements, descriptions of fact, false or misleading representations of
11 fact, passing off, and unfair competition in an amount that is not presently known to
12 simplehuman. By reason of Defendant's actions, constituting false designation of
13 origin, false or misleading statements, false or misleading descriptions of fact, false
14 or misleading representations of fact, passing off, and unfair competition,
15 simplehuman has been damaged and is entitled to monetary relief in an amount to
16 be determined at trial.

17 92. Pursuant to 15 U.S.C. § 1117, simplehuman is entitled to recover
18 (1) Defendant's profits, (2) any damages sustained by simplehuman, and (3) the
19 costs of the action. In assessing damages, the Court may enter judgment up to three
20 times actual damages, and in awarding profits, the Court may in its discretion enter
21 judgment for such sum as the court shall find to be just, according to the
22 circumstances of the case. The Court may also award simplehuman its reasonable
23 attorneys' fees for the necessity of bringing this claim.

24 93. Due to Defendant's actions, constituting false designation of origin,
25 false or misleading statements, false or misleading description of fact, false or
26 misleading representations of fact, passing off, and unfair competition,
27 simplehuman has suffered and continues to suffer great and irreparable injury, for
28 which simplehuman has no adequate remedy at law.

94. Defendant will continue his false designation of origin, false or misleading statements, false or misleading description of fact, false or misleading representations of fact, passing off, and unfair competition, unless and until Defendant is enjoined by this Court.

IX. FIFTH CLAIM FOR RELIEF

(Unfair Competition under California Business & Professions Code §§ 17200 *et seq.*)

95. simplehuman hereby repeats, realleges, and incorporates by reference paragraphs 1-49 and 62-94 of this Complaint as though fully set forth herein.

96. This is an action for unfair competition under California Business & Professions Code §§ 17200, *et seq.*

97. By virtue of the acts complained of herein, Defendant has intentionally caused a likelihood of confusion among consumers and the public and has unfairly competed with simplehuman in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

98. Defendant's acts complained of herein constitute trade dress infringement, trademark infringement, unfair competition, and unlawful, unfair, or malicious business practices, which have injured and damaged simplehuman.

99. Defendant, by his actions, has irreparably injured simplehuman. Such irreparable injury will continue unless Defendant is preliminarily and permanently enjoined by this Court from further violating simplehuman's rights, for which simplehuman has no adequate remedy at law.

X. SIXTH CLAIM FOR RELIEF

(California Common Law Unfair Competition)

100. simplehuman hereby repeats, realleges, and incorporates by reference paragraphs 1-49 and 62-94 of this Complaint as though fully set forth herein.

101. This is an action for unfair competition under the common law of the State of California.

102. Defendant's acts complained of herein constitute trade dress infringement, trademark infringement and unfair competition under the common law of the State of California.

103. By virtue of the acts complained of herein, Defendant has willfully and intentionally caused a likelihood of confusion among the purchasing public in this Judicial District and elsewhere, thereby unfairly competing with simplehuman in violation of the common law of the State of California.

104. Defendant's aforementioned acts have damaged simplehuman in an amount to be determined at trial.

105. Defendant has irreparably injured simplehuman. Such irreparable injury will continue unless Defendant is preliminarily and permanently enjoined by this Court from further violating simplehuman's rights, for which simplehuman has no adequate remedy at law.

106. Defendant's willful acts of unfair competition under California common law constitute fraud, oppression and malice. Accordingly, simplehuman is entitled to exemplary damages pursuant to Cal. Civ. Code Section § 3294(a).

XI. SEVENTH CLAIM FOR RELIEF

(Petition for Cancellation of U.S. Trademark Registration No. 5,969,114)

107. simplehuman hereby repeats, realleges, and incorporates by reference paragraphs 1-49 and 62-94 of this Complaint as though fully set forth herein.

108. This is a claim for cancellation of Defendant's U.S. Trademark Registration No. 5,969,114 under 15 U.S.C. § 1119.

109. Long before the first use, filing and registration dates of Defendant's U.S. Trademark Registration No. 5,969,114, simplehuman has continuously used its SIMPLEHUMAN® Mark in connection with its products, including trash cans. By virtue of simplehuman's continuous and substantial use of its SIMPLEHUMAN® Mark, the SIMPLEHUMAN® Mark has become a strong identifier of simplehuman and its products, and distinguishes simplehuman's products from those of others.

1 simplehuman has built up significant and valuable goodwill and fame in its
2 SIMPLEHUMAN® Mark. simplehuman also relies on its U.S. Trademark
3 registrations for its SIMPLEHUMAN® Mark including U.S. Trademark
4 Registration No. 2,882,479.

5 110. simplehuman will be damaged by continued registration of
6 Defendant's U.S. Registration No. 5,969,114 because the LIVESIMPLE Mark is
7 confusingly similar to the simplehuman's SIMPLEHUMAN® Mark. Potential
8 purchasers, upon seeing Defendant's mark shown in the registration, are likely to
9 mistakenly believe that such mark and goods identified in the registration originate
10 with or are connected or associated with, or sponsored, licensed or approved by
11 simplehuman. Thus, the registration and use of the mark shown in U.S. Registration
12 No. 5,969,114 in connection with the goods identified therein are likely to cause
13 confusion, or to cause mistake or to deceive within the meaning of Section 2(d) of
14 the Trademark Act, 15 U.S.C. § 1052(d).

15 111. In view of simplehuman's prior rights in the SIMPLEHUMAN® Mark,
16 Defendant is not entitled to federal registration of the mark shown in U.S.
17 Registration No. 5,969,114 and this registration should be cancelled.

18 **PRAYER FOR RELIEF**

19 **WHEREFORE**, simplehuman prays for judgment against Defendant as
20 follows:

21 A. That the Court enter judgment in favor of simplehuman and against
22 Defendant on all claims for relief alleged herein;

23 B. An Order adjudging Defendant to have infringed each of the D807
24 Patent, the D485 Patent, and the '316 Patent under 35 U.S.C. § 271;

25 C. A preliminary and permanent injunction enjoining Defendant, his
26 officers, directors, agents, servants, employees, and attorneys, and those persons in
27 active concert or participation with Defendant, from (1) making, using, selling,
28 offering to sell, and/or importing Defendant's products that Plaintiff identifies herein

1 as infringing simplehuman's patent rights, and (2) infringing any of the D807 Patent,
2 the D485 Patent, or the '316 Patent in violation of 35 U.S.C. § 271;

3 D. An Order that Defendant pay to simplehuman actual damages in the
4 form of lost profits, or in the alternative, other damages adequate to compensate for
5 the infringement, but in no event less than a reasonable royalty for the use made of
6 the D807 Patent, the D485 Patent, and the '316 Patent by Defendant, in accordance
7 with 35 U.S.C. § 284 and/or, at simplehuman's election, Defendant's total profits as
8 a result of Defendant's infringement of simplehuman's patents, pursuant to 35
9 U.S.C. § 289;

10 E. An Order adjudging that this case is exceptional under 35 U.S.C. § 285
11 and ordering Defendant to pay to simplehuman its reasonable attorney fees incurred
12 in this action;

13 F. That the Court render a final judgment that Defendant has violated the
14 provisions of 15 U.S.C. § 1125(a) by willfully infringing simplehuman's Bullet
15 Trade Dress, unfairly competing with simplehuman, and falsely designating the
16 origin of his products complained of herein;

17 G. That the Court render a final judgment that Defendant has violated
18 California Business & Professions Code §§ 17200, *et seq.* and California common
19 law by willfully committing trade dress infringement, and unfairly competing with
20 simplehuman;

21 H. That Defendant, his agents, servants, employees, successors, assigns
22 and attorneys and any related companies, and all persons in active concert or
23 participation with one or more of them, be preliminarily and permanently enjoined
24 and restrained from:

25 i. manufacturing, importing, promoting, displaying, distributing,
26 offering to sell, and/or selling Defendant's products shown above as
27 infringing the Bullet Trade Dress, or any products that are not colorably
28 different therefrom;

1 ii. using the Bullet Trade Dress, or any other trade dress that is
2 confusingly similar to such trade dress;

3 iii. using the SIMPLEHUMAN® Mark or any other mark that is
4 confusingly similar to the SIMPLEHUMAN® Mark, including without
5 limitation the LIVESIMPLE mark;

6 iv. falsely designating the origin of Defendant's products;

7 v. passing off his goods as those of simplehuman;

8 vi. unfairly competing with simplehuman in any manner
9 whatsoever;

10 vii. causing a likelihood of confusion or injuries to simplehuman's
11 business reputation; and

12 viii. manufacturing, importing, promoting, displaying, distributing,
13 offering to sell, and/or selling any products that infringe the Bullet Trade
14 Dress.

15 I. That Defendant be directed to file with this Court and serve on
16 simplehuman within thirty (30) days after the service of the injunction, a report, in
17 writing, under oath, setting forth in detail the manner and form in which it has
18 complied with the injunction pursuant to 15 U.S.C. § 1116;

19 J. That Defendant be required to account to simplehuman for any and all
20 profits derived by Defendant by virtue of Defendant's acts complained of herein;

21 K. That simplehuman be awarded its actual damages caused by
22 Defendant's acts complained of herein;

23 L. That Defendant's actions be deemed willful;

24 M. That an accounting be ordered to determine Defendant's profits
25 resulting from his trade dress infringement, trademark infringement, false
26 designation of origin, passing off, and unfair competition, and that simplehuman be
27 awarded monetary relief in an amount to be fixed by the Court in its discretion as it
28 finds just as an equitable remedy and as a remedy under 15 U.S.C. § 1117, including:

- 1 1. all profits received by Defendant from sales and revenues of any
- 2 kind made as a result of his infringing actions;
- 3 2. all damages sustained by simplehuman as a result of Defendant's
- 4 acts of trade dress infringement, trademark infringement, false
- 5 designation of origin, passing off, and unfair competition; and,
- 6 3. the costs of this action;

7 N. That this case be deemed exceptional and the amount of profits and
8 damages be increased by as many times as the Court deems appropriate, pursuant to
9 15 U.S.C. § 1117;

10 O. That the Court award simplehuman its reasonable costs, expenses, and
11 attorneys' fees pursuant to at least 15 U.S.C. § 1117;

12 P. That Defendant be required to deliver and destroy all goods,
13 advertising, and other unauthorized materials bearing trade dress that are essentially
14 identical to, colorable imitations of, or confusingly similar to simplehuman's Bullet
15 Trade Dress, pursuant to 15 U.S.C. § 1118;

16 Q. That simplehuman be awarded exemplary or punitive damages
17 pursuant to Cal. Civ. Code § 3294;

18 R. That the Court direct the United States Patent and Trademark Office to
19 cancel U.S. Trademark Registration No. 5,969,114;

20 S. That simplehuman be awarded restitution and disgorgement;

21 T. An Order awarding pre-judgment and post-judgement interest and costs
22 as fixed by the Court; and

23 U. Such other and further relief as this Court may deem just and proper.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: January 31, 2020

By: /s/ Ali S. Razai

Paul A. Stewart

Ali S. Razai

Nicole R. Townes

Brandon F. Smith

Attorneys for Plaintiff
simplehuman, LLC

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff simplehuman, LLC hereby demands a trial by jury on all issues so triable.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: January 31, 2020

By: /s/ Ali S. Razai

Paul A. Stewart

Ali S. Razai

Nicole R. Townes

Brandon F. Smith

Attorneys for Plaintiff
simplehuman, LLC

CERTIFICATE OF SERVICE

I hereby certify that on January 31, 2020, I caused the **FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT; DEMAND FOR JURY TRIAL, and EXHIBITS 1-6** to be electronically filed with the Clerk of the Court using the CM/ECF system which will send electronic notification of such filing to all attorneys of record.

I certify and declare under penalty of perjury that I am employed in the office of a member of the bar of this Court at whose direction the service was made, and that the foregoing is true and correct.

Executed on January 31, 2020, at Irvine, California.

/s/ Karina Villanueva
Karina Villanueva

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